

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: JULY 19, 2006

Division: TDC

Bulk Item: Yes X No

Department:

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:

Approval of an Agreement with the Florida Keys Council of the Arts to act as a county wide Cultural Umbrella to make recommendations to the Monroe County Tourist Development Council and County concerning funding for tourism related cultural activities.

ITEM BACKGROUND:

TDC to approve same at their meeting of July 11, 2006

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

New Contract

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$670,800

BUDGETED: Yes X No


COST TO COUNTY: \$670,800

SOURCE OF FUNDS: TDC

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


(Lynda Stuart)

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

CONTRACT SUMMARY			
Contract with:	<u>Florida Keys Council of the</u>	Contract #	<u> </u>
	<u>arts</u>	Effective Date:	<u>10/1/06</u>
		Expiration Date:	<u> </u>
Contract Purpose/Description:			
<u>Approval of an Agreement with the Florida Keys Council of the Arts to act as a county wide Cultural Umbrella to make recommendations to the Monroe County Tourist Development Council and County concerning funding for tourism related cultural activities.</u>			
Contract Manager:	<u>Maxine Pacini</u>	<u>3523</u>	<u>TDC # 3</u>
	(Name)	(Ext.)	(Department/Stop #)
for BOCC meeting on	<u>7/19/06</u>	Agenda Deadline	<u>7/5/06</u>

CONTRACT COSTS	
Total Dollar Value of Contract: \$	<u>670,800</u> Current Year Portion: \$ <u> </u>
Budgeted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Account Codes : See Attached
Grant: \$ <u> </u>	
County Match: \$ <u> </u>	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
ADDITIONAL COSTS	
Estimated Ongoing Costs: \$ <u> </u> /yr	For: <u> </u>
(Not included in dollar value above)	(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW			
	Date In	Changes Needed	Date Out
Division Director	5/24/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	5/24/06
Risk Management	5/30/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	5/30/06
O.M.B./Purchasing	5/26/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	5/30/06
County Attorney	5/16/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	5/16/06

Comments: _____

				FISCAL YEAR 2006 PROPOSED BUDGET
115	75011	530340	421 X	KW POPS ORCHESTRA 12/16/2002-11/23/2003
115	75011	530340	165C 434 X	PIRATES IN PARADISE FESTIVAL 06/11/25-12/4
115	75011	530340	165C 434 X	PIRATES IN PARADISE FESTIVAL 06/11/25-12/4
115	75011	530340	440 Y	MEFMM - THE LAST SLAVE SHIP FY 2003 10/1-7/20/2003
115	75011	530340	440 Y	MEFMM - THE LAST SLAVE SHIP FY 2003 10/1-7/20/2003
115	75011	530340	441 X	KW AFRICAN AMERICAN HERITAGE FESTIVAL 6/26-29/03
115	75011	530340	441 X	KW AFRICAN AMERICAN HERITAGE FESTIVAL 6/26-29/03
115	75011	530340	442 X	PIRATES IN PARADISE 11/28-1/8/2002
115	75011	530340	443 Y	MATTHEW JAMPOL DINNER CONCERTS 10/2002 - 9/2003
115	75011	530340	165C 444 X	SCULPTURE KEY WEST 1/7 - 3/26/2006
115	75011	530340	444 X	ART IN THE PARK 2003 1/17-2/22/2003
115	75011	530340	165C 445 X	PERFORMANCE AT ST. PAUL'S 10/1/05-9/30/06
115	75011	530340	165C 446 X	KEY PLAYERS (10/05-4/06)
115	75011	530340	446 Y	KEY PLAYERS (10/03 - 9/04)
115	75011	530340	165C 446 Y	KEY PLAYERS (10/04 - 9/05)
115	75011	530340	165C 447 X	S.F.L. CENTER FOR THE ARTS 11/05-3/05
115	75011	530340	447 X	S.F.L. CENTER FOR THE ARTS 11/05-3/05
115	75011	530340	448 X	FKAG OUTDOOR ART FESTIVALS 1/30-12/1-12/28-30/02 1/11-12/21-23
115	75011	530340	448 X	FKAG OUTDOOR ART FESTIVALS 1/30-12/1-12/28-30/02 1/11-12/21-23
115	75011	530340	165C 449 X	KEYS COMMUNITY CONCERT BAND 11/05-4/06
115	75011	530340	165C 449 X	KEYS COMMUNITY CONCERT BAND 11/05-4/06
115	75011	530340	449 Y	KEYS COMMUNITY CONCERT BAND 11/27/12/18-1/29-2/26-3/26/4/30
115	75011	530340	450 Y	FLORIDA KEYS HERITAGE FESTIVAL 1/18-19/2003
115	75011	530340	450 Y	FLORIDA KEYS HERITAGE FESTIVAL 1/18-19/2003
115	75011	530340	476 Y	KW ART & HISTORIC - HEMINGWAY EVANS 1-9/04
115	75011	530340	477 Y	MEL FISHER MARITIME MUSEUM Reefs, Wrecks & Rascals 10/1-7/20/03
115	75011	530340	165C 478 X	ISLAND OPERA THEATRE 10-6/2006
115	75011	530340	165C 478 Y	ISLAND OPERA THEATRE (10/04 - 9/05)
115	75011	530340	478 X	ISLAND OPERA THEATRE (10/04 - 9/05)
115	75011	530340	479 X	KEY WEST HARRY S. TRUMAN FOUNDATION 6/11-6/12/04
115	75011	530340	479 X	KEY WEST HARRY S. TRUMAN FOUNDATION 6/11-6/12/04
115	75011	530340	480 X	KW THEATRE - BAHAMA VILLAGE YOUNG PEOPLE'S THEATRE PRO
115	75011	530340	481 X	TROPIA BUTTERFLY CENTER 4/1-30/04
115	75011	530340	481 X	TROPIA BUTTERFLY CENTER 4/1-30/04
115	75011	530340	165C 482 Y	FL. KEYS ART GUILD OUTDOOR ART FEST 11/2
115	75011	530340	165C 482 X	FL. KEYS ART GUILD OUTDOOR ART FEST 11/2
115	75011	530340	483 X	PACKEY - T. WILLIAMS THEATRE 1/15-18/11-6/04
115	75011	530340	483 X	PACKEY - T. WILLIAMS THEATRE 1/15-18/11-6/04
115	75011	530340	165C 488 X	FL. KEYS HISTORY OF DIVING MUSEUM 10/05-5
115	75011	530340	165C 488 X	FL. KEYS HISTORY OF DIVING MUSEUM 10/05-5
115	75011	530340	165C 498 X	8TH ANNUAL CHRISTMAS EXHIBIT 12/04/04
115	75011	530340	165C 512 X	9TH ANNUAL CHRISTMAS EXHIBIT 12/05-3/06
115	75011	530340	165C 512 X	9TH ANNUAL CHRISTMAS EXHIBIT 12/05-3/06

				FISCAL YEAR 2006	
				PROPOSED	BUDGET
115	75011	530340	T65C 513	X	530480
115	75011	530340	514	X	530410
115	75011	530340	514	X	530480
115	75011	530340	T65C 515	X	530480
115	75011	530340	T65C 516	X	530480
115	75011	530340	T65C 516	X	530410
115	75011	530340	517	X	530480
115	75011	530340	518	X	530410
115	75011	530340	518	X	530480
115	75011	530340	518	X	530480
115	75011	530340	T55C 519	Y	530410
115	75011	530340	519	X	530480
115	75011	530340	520	X	530480
115	75011	530340	T65C 550	X	530480
115	75011	530340	T65C 550	X	530410
115	75011	530340	T65C 551	X	530480
115	75011	530340	T65C 552	X	530480
115	75011	530340	T65C 552	X	530410
115	75011	530340	T65C 553	X	530480
115	75011	530340	T65C 554	X	530480
115	75011	530340	T65C 555	X	530480
115	75011	530340	T65C 556	X	530480
				MIDDLE KEYS CONCERT SEASON 1/23/2006	
				BLUE SKY ART & CRAFT SHOW & RITE OF SPRING ART & CRAFT SHOW	
				FOUNDERS SOCIETY 2TH ANNIVERSARY OF S	
				H.S. TRUMAN LEGACY SYMPOSIUM 5/2006	
				H.S. TRUMAN LEGACY SYMPOSIUM 5/2006	
				FISHING FRIENDS & FAMILY HEMINGWAY IN KEY WEST 1928-1939-7/	
				KEY WEST PLAYWRIGHTS COMPANY cancelled	
				KEY WEST PLAYWRIGHTS COMPANY cancelled	
				FKFC KEYS CHORALE 10/1-9/30/05	
				FKFC KEYS CHORALE 10/1-9/30/05	
				SUNKEN TREASURE - 20 YEARS LATER - 10/1-9/30/05	
				CIVIL WAR HERITAGE FESTIVAL 2/9-12/2006	
				CIVIL WAR HERITAGE FESTIVAL 2/9-12/2006	
				ROBERT FROST POETRY FESTIVAL 4/21/23/2006	
				M.FISHER MARITIME HERITAGE SOCIETY - SIL	
				FLORIDA KEYS MEDIEVAL FESTIVAL	
				ST. PATRICK'S DAY PARADE	
				FLORIDA KEYS HOLIDAY FESTIVAL 1/22-3/2006	
				KW ART & HISTORIC - IN THEIR OWN WORDS 1	

CULTURAL UMBRELLA AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____ 2006, by and between Monroe County, a political subdivision of the state of Florida, ("COUNTY") and the Monroe Council of the Arts Corporation, d/b/a Florida Keys Council of the Arts, a Florida non-profit corporation ("FKCA").

WITNESSETH:

WHEREAS, COUNTY desires to contract with FKCA so that the FKCA will act as a county wide Cultural Umbrella to make recommendations to the MONROE COUNTY TOURIST DEVELOPMENT COUNCIL (TDC) and COUNTY concerning funding for tourism related cultural activities; and

WHEREAS, FKCA is qualified and able to act as a Cultural Umbrella organization and to provide these recommendations;

NOW, THEREFORE, the parties agree as follows:

1. Term: The term of this agreement is for a three year period commencing October 1, 2006 and terminating September 30, 2009. Upon the recommendation of the Tourist Development Council, the COUNTY may exercise an option for an additional two (2) years upon giving written notice to the FKCA no less than sixty (60) days prior to September 30, 2009. Monroe County's performance and obligation to pay under this agreement, is contingent upon an annual appropriation by the COUNTY.
2. Scope of Services: The FKCA will provide the following services:
 - a) FKCA shall administer TDC policies and procedures which will distribute on an equitable district-wide percentage basis those monies recommended for all TDC qualified cultural events. FKCA will accept applications for the events on an annual basis.
 - b) FKCA shall advertise the availability of the Cultural Umbrella program through which event coordinators may apply for promotional funding. The advertisement shall be placed at a minimum, in a newspaper of general circulation, in each of the three primary areas of the County, to wit: Lower Keys, Middle Keys and Upper Keys. The advertisement shall give notice of the availability of funding, the restriction of such funding to promotional expenditures and any other information which FKCA deems necessary to conduct the cultural umbrella program. FKCA may place the advertisements and be reimbursed pursuant to paragraph 3 or may request TDC to place the advertisements and pay the newspapers directly.
 - c) FKCA shall conduct at least three (3) workshops each year, one per area of the Florida Keys (Lower Keys, Middle Keys, Upper Keys), within two weeks after the release of the request for application, to explain the application process to all potential applicants.
 - d) All meetings related to the administration of the Cultural Umbrella shall be open to the public and properly noticed, in conformity with the same rules as required for all governmental meetings under F.S. 286.011.

- e) The TDC administrative office shall receive a copy of the agenda of any Cultural Umbrella meetings/workshops at least seven (7) days prior to the scheduled meeting/workshop.
- f) FKCA shall recommend funding for events in each district proportionate to the total revenues generated by each district. If funding available under this plan to any district is not allocated for specific events, the monies remaining shall be allocated to the county-wide Cultural Umbrella advertising campaign.
- g) The recommendations of the Cultural Umbrella Committee shall be submitted to the TDC for consideration prior to adoption of the TDC annual budget each year, but FKCA has no final authority to require TDC to adopt its recommendations. TDC will then make recommendations to the COUNTY for allocation of funds and contracts with each individual recipient.
- h) FKCA shall make recommendations to the TDC and COUNTY of those members who shall sit on the Cultural Umbrella Recommendation Committee. There shall be five (5) members, one each representing the five TDC Districts. Recommended appointments will be approved by the TDC and COUNTY and will be referenced in an Exhibit to the Agreement. An amended Exhibit shall be provided by COUNTY if changes occur.
- i) FKCA shall provide in writing, or by verbal communication to the TDC Administrative office Cultural Umbrella funding and event related activities to be included in the scheduled Monroe County Tourist Development Council District Advisory Committees meeting packets.
- j) FKCA shall not receive any administration compensation, directly or indirectly, out of the TDC Cultural Umbrella funds.
- k) The FKCA shall make recommendations for changes in TDC policies pertaining to the Cultural Umbrella as it deems appropriate and shall submit such recommendations for TDC and County approval.

3. Funding:

- a. The COUNTY shall allocate from tourist development tax funds, an amount not to exceed Six Hundred Seventy Thousand Eight Hundred dollars (\$670,800.00) for the agreement year ending September 30, 2007. For each of the remaining years, under the agreement, COUNTY shall allocate from tourist development tax funds such amounts as are established within the TDC budget approved by the COUNTY prior to each fiscal year. The budget for period ending September 30, 2007 is attached hereto as Exhibit B and incorporated herein. Monroe COUNTY and TDC will fund, through its Advertising and Public Relations agencies of record, costs of promotion and advertising of cultural events: (1) directly to vendors upon receipt of properly approved invoices or (2) reimburse the event coordinator upon receipt of properly approved paid invoices and evidence of payment, subject to availability of funds.
- b. No salary, bonus, or other compensation will be paid directly or indirectly out of the County's Cultural Umbrella funds, and no Cultural Umbrella funds shall be used in the computation of any salary, bonus or other compensation to any person.
- c. Administrative costs, including but not limited to salaries, transportation costs, and mailing were previously paid by the predecessor contractor and therefore

pursuant to BOCC Resolution No. 316-2001, shall be borne entirely by the FKCA.

- d. There shall be no action by FKCA which has the effect of reducing in anyway the amount of TDC and FKCA money used for advertising, promotion or any programs of either entity.
4. Termination: The agreement may be terminated by either party with or without cause with 120 days prior written notice.
5. Accounting: Records of the FKCA pertaining to this agreement shall be kept pursuant to generally recognized accounting principals, acceptable to Monroe County, and shall be available to the COUNTY or to an authorized representative for audit, or for records made available pursuant to Chapter 119, Florida Statutes.
6. Modification: Additions to, modification to or deletions from the provisions set forth in this agreement shall be effective only in writing and approved by the parties.
7. Indemnification and Hold Harmless: The FKCA agrees to indemnify and hold Monroe County and the Monroe County Tourist Development Council harmless for any and all claims, liability, losses and causes of action which may arise out of its fulfillment of the agreement. It agrees to pay all claims and losses, including related court costs and reasonable attorneys fees, and shall defend all suits filed due to the negligent acts, errors or omissions of the FKCA employees and/or agents.
8. Taxes: The COUNTY and TDC are exempt from Federal Excise and State Florida Sales Tax.
9. Finance Charges: The COUNTY and TDC will not be responsible for any finance charges.
10. Relationship: It is the intent of the parties hereto that the FKCA shall be legally considered as an independent contractor and that neither it nor its employees or agents shall, under any circumstance, be considered servants or agents of the COUNTY and TDC. COUNTY and TDC shall at no time be legally responsible for any negligence on the part of the Event Sponsor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
11. Disclosure: The FKCA shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinance. The FKCA shall disclose all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interests of the COUNTY and TDC.
12. Assignment: the FKCA shall not assign, transfer, convey, sublet or otherwise dispose of this agreement, or of any or all of its right, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the COUNTY and TDC.

13. Compliance With Laws – Non Discrimination: FKCA shall comply with all international, federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age, or national origin in the performance of work under this agreement. This agreement shall be subject to all international, federal, state, and local laws and ordinances.

14. Force Majeure: Neither COUNTY nor FKCA shall be liable for delay in performance or failure to perform, in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its subcontractors or suppliers, including labor dispute, strike, labor shortage, war or act of war whether an actual declaration thereof if made or not, insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought, or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where the FKCA has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of this agreement.

15. Governing Law/Venue: This agreement shall be governed and construed by and in accordance with the laws of the State of Florida and constitutes the entire agreement between the COUNTY and FKCA. Venue of any court action filed relative to this agreement shall lie in Monroe County, Florida.

16. Antisolicitation: The FKCA warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the Monroe County government or the TDC has any interest, financially or otherwise in the FKCA or its subcontractors.

17. Severability: If any provision of the agreement shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each provision of the agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Notice: Any notice required or permitted under this agreement shall be in writing and hand-delivered or mailed, postage prepaid by certified mail, return receipt requested, to the other party as follows:

TO: COUNTY: AND
Monroe County Administrator/Director,
5100 College Road
Key West, FL 33040

TDC:
Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040

TO: FKCA:
Florida Keys Council of the Arts
1100 Simonton Street, Suite 2-263
Key West, FL 33040

COUNTY, through TDC, shall give notice to FKCA of any meetings at which there is an agenda item pertaining to Cultural Umbrella.

19. Ethics Clause: The FKCA warrants that it has not employed, retained or otherwise had act on its behalf, any former COUNTY office or employee in violation of Section 2 or Ordinance No. 10-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the COUNTY may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present COUNTY officer or employee.

20. Public Entity Crime Statement: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a response on a contract to provide any goods or services to a public entity, may not submit a response/bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit responses/bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

(SEAL)

Attest: Danny L. Kolhage, Clerk

Deputy Clerk

Board of County Commissioners
of Monroe County

Mayor/Chairman

(CORPORATE SEAL)

Attest:

By: _____
Secretary

Print Name

OR

(1) Witness

Print Name

(2) Witness

Print Name

Cultural Umbrella Agreement 2006
Monroe Council of the Arts

Florida Keys Council of the Arts

By: Monica Haskell
President

Monica Haskell
Print Name

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Susan M. Grimsley
SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY
5-16-06

EXHIBIT A

RECOMMENDATION COMMITTEE

The Recommendation Committee of the FKCA Cultural Umbrella is comprised of five (5) members, with one member representing each of the five TDC Districts throughout the Monroe County. The members shall be appointed by the FKCA and confirmed by the TDC and COUNTY.

As of the commencement of the agreement effective October 1, 2006, the members shall be:

District I	<u>Ms. Shirley Freeman</u>
District II	<u>Ms. Sherry Phillips</u>
District III	<u>Ms. Marianne Motches</u>
District IV	<u>Mr. Chris Sante</u>
District V	<u>Mr. Bob Sandifer</u>

The term of a Recommendation Committee member shall be for one (1) year terminating September 30th of each year of the agreement. New appointees, re-appointees and replacement members shall be confirmed by the FKCA, TDC and COUNTY.

EXHIBIT B

FY 2007 BUDGET

Umbrella Total	670,800
Minimum of 30% advertising	201,240

DAC I	53%	248,867
DAC II	6%	28,174
DAC III	14%	65,738
DAC IV	13%	61,043
DAC V	14%	65,738